

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	CC Docket No. 92-90
)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ submits its initial comments in response the Federal Communications Commission’s (Commission’s or FCC’s) Notice of Proposed Rulemaking and Memorandum Opinion and Order (“Notice and Order”) in the above-captioned proceeding.²

In the Notice and Order, the Commission seeks comment on whether the Commission’s rules need to be revised in order to more effectively carry out Congress’s directives in the Telephone Consumer Protection Act of 1991 (“TCPA”). Specifically, the Commission is considering ways it might improve telemarketing rules, and is seeking to enhance consumer privacy protection from telemarketers while avoiding imposing unnecessary burdens on the telemarketing industry and consumers.

One area in which the Commission requests comment is in the interplay of sections 222 and 227 of the Communications Act of 1934, as amended (“Act”). According to the Notice and Order,

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 556 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many also provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). And all are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket 02-278, CC Docket No. 92-90, FCC 02-250 (rel. Sept. 18, 2002).

“[s]ection 222, entitled ‘Privacy of Customer Information,’³ obligates telecommunications carriers to protect the confidentiality of certain information. In the *CPNI Order*, the Commission determined that a telecommunications carrier may use a customer’s proprietary network information (CPNI) to market various services to a customer if that customer has provided the carrier with appropriate consent.”⁴ Section 227, on the other hand, requires telemarketers to maintain “do not call” lists and to place consumers on the list for a period of ten years should the consumer explicitly ask to receive no further calls from that telemarketer.⁵

The Commission seeks comment on whether, if a consumer places her name on a do not call list under section 227, that request should be honored even if the consumer has provided implied (opt-out) consent under section 222 for use and disclosure of her CPNI. The Commission states “we believe it likely that permitting a section 222 opt-out consent to eliminate or trump a section 227 do not call request would lead to customer confusion concerning privacy rights and the actions required to secure those rights.”⁶

NTCA respectfully disagrees with the Commission on this point. Under the current system of company-specific do not call lists, a consumer request to be placed on a do not call list applies only to that telemarketer to whom the request is made. Offering opt-out consent to the consumer’s telecommunications carrier under section 222 indicates an interest in receiving information on new services that may be available either now or in the future from the carrier. It is the role of the FCC and various consumer groups to educate the public to insure that they understand their rights under the TCPA, and exactly what a do not call request implies. NTCA does not believe that offering opt-out consent under section 222 is itself a source of confusion.

³ See, *Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Third Report and Order and Third Further Notice of Proposed Rulemaking, CC Docket Nos. 96-115, 96-149, 00-257, FCC 02-214, (rel. July 25, 2002) (*CPNI Order*).

⁴ *Notice and Order*, p. 13.

⁵ 47 C.F.R. § 64.1200(e)(iii); *see also*, U.S.C. § 227(c).

Elsewhere in the Notice and Order, the Commission seeks comment on whether it should revisit the concept of a national do not call list. Among the requirements that must be satisfied in the creation of a national database, according to the Commission, are “requiring each common carrier providing telephone exchange service to inform subscribers of the opportunity to object to receiving telephone solicitations” and “requiring each common carrier providing services to any person for the purpose of making telephone solicitations to notify such persons of the requirements of this section and the regulations thereunder.”⁷

NTCA believes that such requirements placed upon NTCA member companies would be onerous, and would negatively impact on each company’s bottom line. NTCA member companies are small, and have limited resources at their disposal with which to provide telecommunications services to their customers. Many must compete with larger providers who have access to far greater resources. Complying with the requirements associated with implementing and maintaining a national do not call list would require a commitment of both financial and manpower resources. If the Commission imposes this requirement it should permit carriers to recover the costs of compliance by including them in their interstate access rates.

⁶ *Notice and Order*, p. 14.

⁷ *Id.*, pp. 31-32.

CONCLUSION

Based on the reasons stated above, NTCA believes that under the current company specific do not call list regime, there is no conflict between a customer's consent to a carrier's use of her CPNI under section 222 of the Act and a request to be placed on a company's do not call list under section 227. Also, NTCA believes that the costs of complying with notice requirements should be recovered in access charges.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
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November 22, 2002

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CG Docket No. 02-278, CC Docket No. 92-90, FCC 02-250 was served on this 22nd day of November 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

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